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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:
Standard Mine Superfund Site
Gunnison County, Colorado

U.S. Moly Corporation,

Respondent.

ADMINISTRATIVE ORDER DIRECTING
COMPLIANCE WITH REQUEST FOR
ACCESS

U.S. EPA Region 8
CERCLA Docket No. CERCLA-08-2007-0004

Proceeding Under Section 104(e) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. § 9604(e)

**ADMINISTRATIVE ORDER DIRECTING COMPLIANCE
WITH REQUEST FOR ACCESS**

I. JURISDICTION

1. This Administrative Order ("Order") is issued to U.S. Moly Corporation (hereinafter "Respondent"), pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9604(e)(5), and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR § 300.400(d)(4). This authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923, redelegated to the Regional Administrators of EPA on May 11, 1994, by EPA Delegation No. 14-6, further delegated to the Assistant Regional Administrator, Office of Ecosystems Protection and Remediation and the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice on December 20, 1996, and further delegated to the Directors of the Technical Enforcement and Legal Enforcement Programs.

II. STATEMENT OF PURPOSE

2. This Order requires Respondent to grant EPA, the Colorado Department of Public Health and Environment ("CDPHE") and their authorized representatives entry to and access across an existing roadway ("Lucky Jack Road") located on the Lucky Jack Mine property, as more particularly depicted on the map attached hereto as Exhibit A and incorporated herein, ("Lucky Jack Property") located on Mount Emmons, in Gunnison County, Colorado, for the purpose of reaching the Standard Mine Superfund Site to

enable EPA and CDPHE to undertake response actions pursuant to their responsibilities under CERCLA. This Order further requires Respondent to refrain from interfering with access over the Lucky Jack Road and the Standard Mine Site by EPA, CDPHE and their authorized representatives for the purposes set forth herein.

III. FINDINGS OF FACT

3. The Standard Mine Site ("Site") is located approximately 30 miles northwest of Gunnison and 5 miles west of Crested Butte in Gunnison County, Colorado, in the Ruby Range of the Gunnison National Forest. The Site includes adits and shafts which access approximately 8,400 feet of open mine workings on six operating levels, waste rock and tailings piles, concrete footings and stem walls, a tailings pond approximately an acre in size, and various mine-related structures.

4. EPA has determined that the Site is contaminated with lead, manganese, zinc, and cadmium, at levels that threaten human health and the environment. The loading of heavy metals into Coal Creek, the primary supply of drinking water for the town of Crested Butte, poses a threat to human health. In addition, high concentrations of lead, manganese, zinc, cadmium and other metals found at the Site are migrating from the Site as acid mine drainage. There is also a risk of direct exposure from mining wastes at the Site to nearby residents and recreational users. Exposure to these heavy metals could lead to numerous adverse health effects such as delayed mental and physical development in children, kidney damage, skin damage, problems with the circulatory system and an increase risk of cancer.

5. The Site sits at an elevation between 11,000 and 11,600 feet above mean sea level in a mountainous region that receives more than 300 inches of snowfall per year on average. This results in a high spring snow melt that exacerbates the erosion and transport of heavy metals. Due to the elevation and alpine climate at the Site, snow normally limits working access until mid-June. Further, autumn snows usually begin by early October. These extreme weather conditions result in a very short construction season.

6. EPA listed the Site on the CERCLA National Priorities List, 40 C.F.R. Part 300, App. B, pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B) on September 14, 2005. In addition, EPA has determined that the Site presents an imminent and substantial endangerment to the public health and welfare and the environment and is conducting response actions at the Site to control and mitigate the releases of hazardous substances at and from the Site. These response actions include dewatering of tailings within the impoundment dam, construction of a mine waste repository, excavation of waste rock piles and the tailings impoundment and placement of such material into the mine waste repository, re-vegetation for the purpose of erosion control, and the commencement of restoration activities for Elk Creek. EPA is also continuing activities relating to the Remedial Investigation/Feasibility Study for the Site.

7. The only feasible means to reach the Standard Mine Site by vehicle is over a road sometimes referred to as "Trappers Way" that connects from County Road 12 ("CR 12") to a national forest development road within the Gunnison National Forest for 1.1 miles, crosses the Lucky Jack Property and is referred to as the "Lucky Jack Road" for approximately one-half mile, and then follows a mining road on federal land for

approximately four miles leading up to the Standard Mine Site. The portion of Trappers Way known as the Lucky Jack Road is blocked by three locked, stand alone gates on the Lucky Jack Property.

8. On or about February 28, 2006, the Respondent's parent corporation, U.S. Energy Corporation ("U.S. Energy"), re-acquired and became the owner of the Lucky Jack Property. Prior to that time the Lucky Jack Property was owned and controlled by Phelps Dodge Corporation ("Phelps") and its affiliate, Mt. Emmons Mining Company, whose successor in interest, Amax Mining Company, had acquired the Lucky Jack Property from U.S. Energy in the 1970s under a royalty agreement. During its ownership and control, Phelps granted access to EPA over the Lucky Jack Road to allow EPA to reach the Standard Mine Site to undertake response action activities and routinely gave EPA personnel a key to the upper gate that blocked access over the Lucky Jack Road to the Site.

9. The Lucky Jack Property consists of 25 patented and 350 unpatented mining claims totaling approximately 5,400 acres over 8 square miles. The Lucky Jack Property is open, unfenced and located within the Gunnison National Forest. Also located on the Lucky Jack Property is an operating water treatment plant that treats contaminated water from the Lucky Jack mine under a permit issued under by the State of Colorado under the National Pollutant Discharge Elimination System. When U.S. Energy re-acquired the Lucky Jack Property in 2006, it also became responsible for operation of the water treatment plant.

10. In 2007, U.S. Energy created the Respondent, U.S. Moly Corporation, as a subsidiary and transferred the Lucky Jack Property to the Respondent. While

Respondent is not currently engaged in active mining on the Lucky Jack Property, Respondent has indicated that it intends to commission a mining feasibility study to evaluate development of the molybdenum deposit located on the Lucky Jack Property.

11. During the 2006 construction season, U.S. Energy executed an access agreement allowing EPA access over the Lucky Jack Road for a five month period, from June through October 2006. There were serious problems with access during this time period. EPA was not given keys to the gates blocking the Lucky Jack Road. EPA employees and contractors were locked in at the Standard Mine Site above the Lucky Jack Property without access to CR 12 until a U.S. Energy employee was available to unlock the gates. This process was not only inefficient and a waste of government resources, EPA employees and contractors were at serious risk in the event of an accident or medical emergency.

12. To perform the response actions described in paragraph 6 above, it will be necessary for employees, agents, contractors, and other representatives of EPA and CDPHE to cross the Lucky Jack Road to obtain access to the Standard Mine Site. EPA estimates that the duration of the required entry and access across the Lucky Jack Road will be during the months of May through October for the next four to six years.

13. Despite requests from representatives of EPA, Respondent has refused to allow access across the Lucky Jack Road for purposes of reaching the Standard Mine Site to perform the response activities described above on terms that are reasonable and that do not jeopardize the health and safety of EPA personnel and contractors.

14. In light of the short construction season at the Site and to perform response actions this year, immediate access the Lucky Jack Road is necessary.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

15. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. The Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

17. All of the substances listed in Paragraph 4 above are hazardous substances or pollutants or contaminants within the meaning of Sections 101(14) and 101(23) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(23).

18. The past disposal and migration of hazardous substances or pollutants or contaminants at or from the Site constitutes an actual "release" or a threat of such a release into the "environment" within the meaning of Sections 101(8) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22), and thus there is a reasonable basis to believe that there may be a release or threat of release within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 104(e)(1).

19. The Lucky Jack Property, owned or controlled by the Respondent, is adjacent to a facility:

- a. where a hazardous substance, pollutant or contaminant has been generated, stored, treated, disposed of, or transported from; and
- b. from or to which a hazardous substance, pollutant or contaminant has been or may have been released; and
- c. where such release is or may be threatened; and

- d. where entry is needed to effectuate a response action within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

20. Entry across the Lucky Jack Road by the agents, contractors, or other representatives of EPA or CDPHE is needed for the purposes of determining the need for response, choosing a response action, taking a response action, and otherwise enforcing the provisions of CERCLA, within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

21. Respondent's attempt to condition its grant of access amounts to a denial of access within the meaning of Section 104(e)(5)(A) of CERCLA, 42 U.S.C. § 9604(e)(5)(A), and 40 C.F.R. 300.400(d)(4)(i).

V. ORDER

22. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record, Respondent is hereby ordered to provide EPA, CDPHE and their officers, employees, agents, contractors, and other representatives, including authorized representatives of the U.S. Forest Service, full and unrestricted access during daylight hours to the Lucky Jack Road for the purpose of reaching the Standard Mine Site to conduct response activities, including but not limited to performing removal response actions and the RI/FS.

23. Within three business days of the effective date of this Order, Respondent shall provide to EPA five sets of keys or other appropriate devices necessary to pass through all gates on the Lucky Jack Property that cross the Lucky Jack Road leading to the Standard Mine access road. The keys shall be delivered to EPA to the attention of

Christina Progross, Remedial Project Manager for the Standard Mine Superfund Site, U.S. EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202. The keys shall be distributed to the EPA Remedial Project Manager, the Remedial Contractor Project Manager, the EPA On-Scene Coordinator, the Response Contractor Project Manager, and the Shift Forman (the "Site Supervisors"). The Site Supervisors shall maintain possession of the keys and relock the upper two gates before and after each ingress and egress by EPA employees, contractors and other representatives. The Site Supervisors shall relock the lower gate near Kebler Pass before and after ingress and egress by EPA employees, contractors and other representatives during times outside the normal operating hours of the water treatment plant. At the conclusion of each construction season, EPA shall return all sets of gate keys to Respondent. On or before May 15 of each succeeding construction season until completion of the remedial action, Respondent shall provide to EPA five sets of keys or other appropriate devices necessary to pass through all gates on the Lucky Jack Property that cross the Lucky Jack Road leading to the Standard Mine access road. The keys shall be delivered to EPA to the attention of the EPA Remedial Project Manager for the Standard Mine Superfund Site, U.S. EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202 or such other authorized EPA employee designated by EPA.

24. EPA shall maintain a daily log of EPA employees, contractors and other representatives using the Lucky Jack Road and provide a copy of such log to Respondent on a regular basis. An EPA representative shall sign in at the water treatment plant each morning and advise Respondent of the activities that EPA has planned for the day that may impact use of the Lucky Jack Road. At such time, Respondent will advise the EPA

representative of any activities Respondent has planned for the day that may impact use of the Lucky Jack Road. The EPA representative and Respondent shall coordinate their respective activities to avoid any conflicts.

25. EPA shall repair any damage caused by its use of the Lucky Jack Road and restore it back to its existing condition unless Respondent requests otherwise.

26. Respondent shall not interfere with EPA's exercise of its access authorities pursuant to 42 U.S.C. § 9604(e) and 40 C.F.R. § 300.400(d), and shall not interfere with or otherwise limit use of the Lucky Jack Road pursuant to this Order by EPA, CDPHE, their officers, employees, agents, contractors, or other representatives. Any such interference shall be deemed a violation of this Order.

27. Nothing herein limits or otherwise affects any right of entry held by the United States or the State of Colorado pursuant to applicable laws, regulations, or permits.

28. This Order shall apply to and be binding upon Respondent and its successors and assigns, and each and every agent of Respondent and upon all other persons and entities who are under the direct or indirect control of Respondents including any and all lessees of Respondent.

29. In the event of any conveyance by Respondent, or Respondent's agents, successors and assigns, of an interest in the Lucky Jack Property, Respondent or Respondent's agents, successors and assigns shall convey the interest in a manner which ensures continued access to the Lucky Jack Road by EPA, CDPHE and their representatives for the purpose of carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of the Lucky Jack Road so that the use will not

interfere with activities undertaken or to be undertaken by EPA, CDPHE and their representatives. Respondent, or Respondent's agents, successors and assigns shall notify EPA in writing at least thirty (30) days prior to the conveyance of any interest in the Lucky Jack Property, and shall, prior to the transfer, notify the other parties involved in the conveyance of the provisions of this Order.

VI. ENFORCEMENT

30. Compliance with this Order shall be enforceable pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). A court may impose a civil penalty on Respondent of up to \$32,500 for each day that Respondent unreasonably fails to comply with this Order, as provided in Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), and the Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121, 40 C.F.R. Part 19.4. In addition, any person who is liable for a release or threat of release of a hazardous substance or pollutant or contaminant and who fails to comply with this Order may be liable for punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Nothing herein shall preclude EPA from taking any additional enforcement actions, and/or other actions it may deem necessary for any purpose, including the prevention or abatement of a threat to the public health, welfare, or the environment arising from conditions at the Standard Mine Site, and recovery of the costs thereof.

31. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action which EPA has now or may have in the future against Respondent, or against any entity which is not a party to this Order.

32. Nothing in this Order shall affect in any manner the right of EPA or CDPHE to issue any other orders to or take any other administrative or civil action against Respondent or any other parties under CERCLA which relate to the Standard Mine Site or any other site.

33. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

VII. ADMINISTRATIVE RECORD

34. EPA has established an Administrative Record which contains the documents that form the basis for the issuance of this Order. It is available for review by appointment on weekdays between the hours of 8:00 a.m. and 4:30 p.m. at the EPA offices located at 1595 Wynkoop Street, Denver, Colorado. To review the Administrative Record, please contact Libby Faulk at (303) 312-6083 to make an appointment. A copy of the Administrative Record is also available for viewing at the Old Rock Community Library, 507 Maroon Avenue, Crested Butte, Colorado.

VIII. OPPORTUNITY TO CONFER

35. Within three business days after receipt of this Order by Respondent, Respondent may request a conference with EPA, to be held no later than five business days after Respondent's request, on any matter pertinent to this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions which Respondent may have regarding this Order. Respondent may appear in person or by an attorney or other representative at the conference. Respondent may also submit written comments or statements of position on any

matter pertinent to this Order no later than the time of the conference, or at least two business days before the effective date of this Order if Respondent does not request a conference. EPA will deem Respondent to have waived its right to the conference or to submit written comments if it fails to request the conference or submit comments within the specified time periods. Any request for a conference or written comments or statements should be submitted to:

Andrea Madigan
Legal Enforcement Program
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202
303-312-6904

IX. EFFECTIVE DATE; COMPUTATION OF TIME

36. Because of the immediate need to conduct the activities described above, this Order shall be effective ten business days after its receipt by Respondent or Respondent's designated representative unless a conference is timely requested as provided above. If a conference is timely requested, then at the conclusion of the conference or after the conference, if EPA determines that no modification to the Order is necessary, the Order shall become effective immediately upon notification by EPA of such determination. If modification of the Order is determined by EPA to be necessary, the Order shall become effective upon notification by EPA of such modification. Any EPA notification under this paragraph may, at EPA's discretion, be provided to Respondent by facsimile, electronic mail, or oral communication; provided that, if EPA does use such a form of notification, it will also confirm such notification by first class,

certified or express mail to Respondent or its legal counsel. Any amendment or modification of this Order by EPA shall be made or confirmed in writing.

37. For purposes of this Order, the term "day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or federal legal holiday. When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday, or federal legal holiday, the period shall run until the next business day.

X. NOTICE OF INTENT TO COMPLY

38. On or before the effective date of this Order, Respondents shall notify EPA in writing whether Respondents will comply with the terms of this Order. Respondents' failure to notify EPA of its unconditional intent to fully comply with this Order by the time the Order becomes effective shall be 1) construed as a denial of EPA's request for access, and 2) as of the effective date of the Order, treated as a violation of the Order. Such written notice shall be sent to:

Andrea Madigan
Legal Enforcement Program
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202
303-312-6904

XI. TERMINATION

39. This Order shall remain in effect until the Assistant Regional Administrator, Office of Ecosystems Protection and Remediation and the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice

their designees notify Respondent in writing that access to the Lucky Jack Road is no longer needed.

SO ORDERED.

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 8

By: Sharon L Kercher

Sharon Kercher
Director, Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: April 19, 2007

By: David Janik

David Janik
Acting Director, Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: April 23, 2007